

CHAPTER Env-Wq 500 STATE WATER POLLUTION CONTROL REVOLVING LOAN FUND

Statutory Authority: RSA 486:14, I

Readopt with amendments Env-Wq 501, eff. 08-26-09 (doc. #9531), to read as follows:

PART Env-Wq 501 PURPOSE AND APPLICABILITY

Env-Wq 501.01 Purpose. The purpose of this chapter is to ***implement RSA 486:14, I, and 40 CFR Part 35, Subparts I and K, by*** establishing:

(a) The procedures and criteria applicable to ~~governmental~~ ***eligible*** entities that apply for financial assistance from the state water pollution control revolving fund (CWSRF) ~~established pursuant to~~ ***authorized by*** RSA 486:14, I;

(b) The requirements for completing projects for which financial assistance from the CWSRF is received; and

(c) The process for establishing repayment requirements for the financial assistance received.

Env-Wq 501.02 Applicability. The rules in this chapter shall apply to any ~~governmental~~ ***eligible*** entity that ~~obtains or wishes to obtain~~ ***applies for*** financial assistance from the CWSRF.

PART Env-Wq 502 DEFINITIONS

Readopt with amendments Env-Wq 502.01, eff. 08-26-09 (doc. #9531), to read as follows:

Env-Wq 502.01 “Administration costs” means expenses associated with managing the CWSRF program. Such costs include engineering and environmental review of proposed pollution abatement projects, state overview inspections, ~~and~~ accounting, and disbursement functions.

Readopt with amendments Env-Wq 502.02, eff. 05-08-07 (doc. #8883), to read as follows:

Env-Wq 502.02 “Applicant” means the ~~governmental~~ ***eligible*** entity that ***files a pre-application or an application, or both, applies for a loan*** financial assistance from the CWSRF.

Adopt Env-Wq 502.03 through Env-Wq 502.05 to read as follows:

Env-Wq 502.03 “Application” means the written document(s), with attachments, through which financial assistance is requested.

Env-Wq 502.04 “Asset maintenance and renewal plan” means a plan developed and implemented by the applicant to maintain and eventually replace infrastructure funded in whole or in part by the CWSRF.

Env-Wq 502.05 “Asset management program” means a systematic process of financing, inventorying, assessing, operating, maintaining, upgrading, and replacing infrastructure cost-effectively while maintaining a sustainable level of service.

Readopt with amendments Env-Wq 502.03, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 502.06, to read as follows:

Env-Wq 502.0306 “Capitalization grants” means funds made available to the state by the federal government for use in the CWSRF program in accordance with:

- (1a) Title VI of the federal ~~Water Quality Act (WQA)~~ CWA, 33 U.S.C. §§1381-1387; or
- (2b) Any other federal initiative.

Readopt with amendments Env-Wq 502.39, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.07, to read as follows:

Env-Wq 502.3907 ***“Clean Water Quality Act (CWQA)”*** means the federal Clean Water Act of 1972 as amended in 1987, 33 U.S.C. ***Chapter 26, Water Pollution Prevention and Control***, §§1251 - 1387.

Readopt with amendments Env-Wq 502.04 through Env-Wq 502.07, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.08 through Env-Wq 02.11, to read as follows:

Env-Wq 502.0408 ***“Collector sewer”*** means ~~a~~ lateral sewers ~~primarily~~ installed ***primarily*** to collect wastewater directly from individual building sewers or private property.

Env-Wq 502.0509 ***“Combined sewer”*** means a sewer ~~which conveys or that~~ serves as ***both*** a sanitary sewer and a storm sewer.

~~Env-Wq 502.06 “Commissioner” means the commissioner of the department of environmental services. [term no longer used]~~

Env-Wq 502.0710 ***“Department”*** means the department of environmental services.

Readopt Env-Wq 502.08, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 502.11, to read as follows:

Env-Wq 502.0811 ***“Disbursements”*** means a transfer of funds from the CWSRF to a recipient.

Adopt Env-Wq 502.12 and Env-Wq 502.13 to read as follows:

Env-Wq 502.12 “Eligible entity” means a governmental entity or an entity other than a governmental entity that is authorized by 33 U.S.C. §§1381-1387 to apply for financial assistance from the CWSRF.

Env-Wq 502.13 “Engineering services” means consultations, investigations, reports, or services for the design and construction of projects within the scope of professional engineering.

Readopt with amendments Env-Wq 502.09, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.14, to read as follows:

Env-Wq 502.0914 ***“Eligible projects costs”*** means ~~those~~ ***project costs that are*** eligible for participation ~~in funding from the CWSRF as specified in Env-Wq 505.01~~ ***504.03***.

Readopt Env-Wq 502.10, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.15, to read as follows:

Env-Wq 502.4015 ***“Environmental review”*** means an analysis of the potential impact of a proposed project on the human and natural environment.

Readopt Env-Wq 502.11, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 502.16, to read as follows:

Env-Wq 502.4416 ***“Excusable delay”*** means a delay that is beyond the recipient’s control in beginning or completing the planning, design, or construction of a pollution abatement project such as, but not limited to, a delay caused by an act of nature or war.

Readopt with amendments Env-Wq 502.12, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.17, to read as follows:

Env-Wq 502.4217 ***“Final project cost”*** means the ***dollar*** amount of ~~the actual~~ ***eligible*** project expenditures plus any outstanding interest on the loan accrued during project ***planning***, design, ~~planning~~, or construction.

Adopt Env-Wq 502.18 to read as follows:

Env-Wq 502.18 “Financial assistance” means funds provided from the CWSRF to pay in whole or in part for an infrastructure project, whether as a loan, grant, or any other form of assistance.

Readopt with amendments Env-Wq 502.13, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 502.19, to read as follows:

Env-Wq 502.4319 ***“Financial assistance agreement” means the contract between the state and a recipient that establishes the rights and obligations of the state and the recipient relative to financial assistance from the CWSRF. The term includes original loan agreements and supplemental **loan** agreements.***

Readopt Env-Wq 502.14, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.20, to read as follows:

Env-Wq 502.4420 ***“Fiscal year” means the period beginning July 1 and ending the following June 30.***

Adopt Env-Wq 502.21 to read as follows:

Env-Wq 502.21 “Governing body” means the group of individuals that has the authority and responsibility to authorize the applicant to enter into contracts and expend funds.

Readopt Env-Wq 502.15, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 502.22, to read as follows:

Env-Wq 502.4522 ***“Governmental entity” means a city, town, district, association, county, or other public body created under state law, having jurisdiction over stormwater management or disposal of sewage, industrial waste, or other wastes.***

Adopt Env-Wq 502.23 and Env-Wq 502.24 to read as follows:

Env-Wq 502.23 “Green project” means an infrastructure project that:

(a) Uses natural systems in place of or to supplement existing infrastructure to protect water resources; or

(b) Incorporates water or energy efficiency improvements or other environmentally-protective measures as defined by federal capitalization grants.

Env-Wq 502.24 “Industrial waste” means “industrial waste” as defined in RSA 485-A:2, VI, as reprinted in Appendix B.

{Env-Wq 502.16 has been moved to Env-Wq 502.30 to be in alphabetical order}

Readopt Env-Wq 502.17, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.25, to read as follows:

Env-Wq 502.4725 ***“Infiltration/Inflow (I/I)” means water other than wastewater that enters a sewer system.***

Adopt Env-Wq 502.26 through Env-Wq 502.28 to read as follows:

Env-Wq 502.26 “Infrastructure” means all structures and all mechanical and electrical equipment that contain and/or convey wastewater from the point of generation to the point of discharge after treatment, and the land necessary for such structures and equipment, whether for wastewater treatment, nonpoint source pollution control, watershed management, or estuary management.

Env-Wq 502.27 “Infrastructure project” means a project intended to construct, expand, or rehabilitate infrastructure for wastewater collection/treatment, nonpoint source pollution control, watershed management, or estuary management, including the requisite planning, land acquisition, design, and construction. The term includes a green project.

Env-Wq 502.28 “Initiation of operation” means the date on which the project that was funded in whole or in part using funds from the CWSRF is placed into use for the purposes for which it was planned, designed, and constructed.

Readopt Env-Wq 502.18, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.29, to read as follows:

Env-Wq 502.4829 “Intended use plan (IUP)” means a document prepared each year by the department in accordance with 40 CFR §35.3150.

Readopt Env-Wq 502.16, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.30, to read as follows:

Env-Wq 502.4630 “Interceptor sewer” means a sewer designed to collect wastewater from collector sewers and transport it to a wastewater treatment plant.

Readopt with amendments Env-Wq 502.19, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 502.31, to read as follows:

Env-Wq 502.4931 “Loan recipient” means ~~an governmental entity~~ ***applicant*** that receives a loan from the CWSRF.

{Env-Wq 502.20, Loan repayment, has been moved and renumbered as Env-Wq 502.42, Repayment}

Readopt with amendments Env-Wq 502.21 and Env-Wq 502.22, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.32 and Env-Wq 502.33, to read as follows:

Env-Wq 502.2432 “Market rate” means ~~for each period beginning October 1 and ending the following September 30, the 11 G.O. (Government Obligation) Bond Index published the first week of October as provided by the state treasurer~~ ***the prevailing market rate determined by the department pursuant to Env-Wq 507.02, upon which the interest rate for new loans is based.***

Env-Wq 502.2233 “Nonpoint source (***NPS***) pollution” means pollution caused by sources that are not regulated as point sources, such as pollution caused by ***runoff from*** agricultural, silvicultural, and urban ~~runoff areas~~.

Adopt Env-Wq 502.34 to read as follows:

Env-Wq 502.34 “Other wastes” means “other wastes” as defined in RSA 485-A:2, VIII, as reprinted in Appendix B.

Readopt with amendments Env-Wq 502.23, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 502.35, to read as follows:

Env-Wq 502.2335 “Original loan agreement” means the initial contract between the state and a loan recipient through which the department agrees to provide funds from the CWSRF to the loan recipient and the loan recipient promises to repay the loan to the CWSRF.

Readopt with amendments Env-Wq 502.24, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.36, to read as follows:

Env-Wq 502.2436 “Planning” means all necessary engineering reports and studies to determine the ***cost effective alternatives and*** feasibility of a pollution abatement project.

Readopt with amendments Env-Wq 502.25, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 502.37, to read as follows:

Env-Wq 502.2537 “Pollution abatement project” means a project, including the ***planning***, design, ~~planning~~, or construction of any or all aspects of the project, necessary to prevent, minimize, or abate water pollution caused by point or non-point sources ~~or other impairments~~.

Readopt with amendments Env-Wq 502.26, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.38, to read as follows:

Env-Wq 502.2638 “Priority list” means a list of projects expected to receive assistance under the CWSRF program.

Readopt Env-Wq 502.27, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.39, to read as follows:

Env-Wq 502.2739 “Priority system” means the criteria for ranking projects on the priority list.

Readopt Env-Wq 502.28, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 502.40, to read as follows:

Env-Wq 502.2840 “Project completion” means the date of substantial completion of a pollution abatement project or the scheduled completion date in the financial assistance agreement, unless modified with the consent of all parties.

Readopt with amendments Env-Wq 502.29 and Env-Wq 502.20, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 502.41 and Env-Wq 502.42, to read as follows:

Env-Wq 502.2941 “Recipient” means ~~an governmental entity~~ ***applicant*** that receives financial assistance from the CWSRF. The term includes loan recipients.

Env-Wq 502.2042 “~~Loan~~ Repayment” means the ***payment by a recipient of*** principal or interest payments, or both, on ~~loan~~ funds received by a ~~loan~~ recipient, which must be credited directly to the CWSRF.

Adopt Env-Wq 502.43 and Env-Wq 502.44 to read as follows:

Env-Wq 502.43 “Resident engineer” means a licensed professional engineer as defined in Env-C 502.09 who has a civil or sanitary engineering designation and at least 3 years of relevant experience in the construction inspection and oversight of water pollution control projects, whose work address is at the project site.

Env-Wq 502.44 “Security” means a recipient’s real or personal property or other collateral that is pledged by the recipient to ensure repayment to the department.

Readopt with amendments Env-Wq 502.30, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.45, to read as follows:

Env-Wq 502.3045 “Septage” means “septage” as defined in RSA 485-A:2, IX-a, ~~namely “material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, excluding sewage sludge from public treatment works and industrial waste and any other sludge.”~~ ***as reprinted in Appendix B.***

Adopt Env-Wq 502.46 to read as follows:

Env-Wq 502.46 “Sewage” means “sewage” as defined in RSA 485-A:2, X, as reprinted in Appendix B.

Readopt with amendments Env-Wq 502.31, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.47, to read as follows:

Env-Wq 502.3147 “Sludge” means “sludge” as defined in RSA 485-A:2, XI-a, ~~namely “the solid or semisolid material produced by water and wastewater treatment processes, excluding domestic septage; provided, however, sludge which is disposed of at solid waste facilities permitted by the department is considered solid waste and regulated under RSA 149-M.”~~ ***as reprinted in Appendix B.***

Readopt Env-Wq 502.32, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.48, to read as follows:

Env-Wq 502.3248 “State” means the state of New Hampshire.

Readopt with amendments Env-Wq 502.33, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.49, to read as follows:

Env-Wq 502.33~~49~~ “State match” means funds equaling 20 percent of the capitalization grant, which the ~~WQA-CWA~~ requires the state to deposit into the **CWSRF**.

Readopt Env-Wq 502.34, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.50, to read as follows:

Env-Wq 502.34~~50~~ “Substantial completion” means that date as certified by the engineer when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the contract documents, so that the project or specified part can be used for the purposes for which it is intended.

Readopt Env-Wq 502.35, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 502.51, to read as follows:

Env-Wq 502.35~~51~~ “Supplemental agreement” means an amendment to a financial assistance agreement executed between the state and a recipient which stipulates the final project cost and the applicable repayment terms.

Readopt with amendments Env-Wq 502.36 through Env-Wq 502.38, eff. 05-08-07 (doc. #8883), and renumber as Env-Wq 502.52 through Env-Wq 502.54, to read as follows:

Env-Wq 502.36~~52~~ “Wastewater” means the spent water of a community. ***The term includes water carrying domestic, commercial, and industrial wastes as well as other wastes.***

Env-Wq 502.37~~53~~ “Wastewater facilities” means “wastewater facilities” as defined in RSA 485-A:2, XIX, ~~namely “the structures, equipment, and processes required to collect, convey, and treat domestic and industrial wastes, and dispose of the effluent and sludge.”~~ ***as reprinted in Appendix B.***

Env-Wq 502.38~~54~~ “Wastewater treatment plant” means “wastewater treatment plant” as defined in RSA 485-A:2, XVI-a, ~~namely “the treatment facility or group of treatment devices which treats domestic or combined domestic and industrial wastewater through alteration, alone or in combination, of the physical, chemical, or bacteriological quality of the wastewater and which dewater and handles sludge removed from the wastewater.”~~ ***as reprinted in Appendix B.***

Readopt with amendment Env-Wq 503, eff. 08-26-09 (doc. #9531), to read as follows:

PART Env-Wq 503 ESTABLISHMENT OF CWSRF

Env-Wq 503.01 ***Authority for Loan Fund.*** ~~As provided in RSA 486:14, I(a) authorizes New Hampshire “to participate in the federally funded state water pollution control ... revolving loan funds or grants as may be provided under the Clean Water Act... or related federal legislation as amended from time to time. The loan funds shall be administered by the commissioner of the department of environmental services under rules adopted by the commissioner under the provisions of RSA 541-A.”~~

- ~~(a) A dedicated state water pollution control revolving loan fund has been established for the purposes of providing low interest loans for the planning, design and construction of pollution abatement projects; and~~
~~(b) The SRF shall be administered by the commissioner.~~

Env-Wq 503.02 ***Deposits to CWSRF.*** Pursuant to RSA 486:14, the state shall deposit in the **CWSRF** the following:

- (a) Capitalization grants as appropriated by the United States Congress;
- (b) The state match as appropriated by the general court, deposited to the **CWSRF** on a schedule coinciding with the payment of federal funds into the **CWSRF**;
- (c) Repayments of principal and interest by loan recipients;

(d) Investment earnings credited to the assets of the **CWSRF**, which shall become part of the total assets of the **CWSRF**; and

(e) Any other funds as may be appropriated or available ~~in excess of the mandatory state match~~.

Env-Wq 503.03 Public Records. All records of the department relating to the financial assistance program covered by the rules of this chapter shall be public records available for public inspection by any interested person during normal business hours **as provided in RSA 91-A**.

Readopt with amendment Env-Wq 505, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 504, to read as follows:

PART Env-Wq ~~505~~**504** **USE OF CWSRF; ELIGIBLE PROJECTS AND COSTS**

Env-Wq ~~505~~**504.01** ~~Types-**Availability** of Financial Assistance from the CWSRF~~. The **CWSRF** shall be used to provide financial assistance as authorized by a specific capitalization grant to ~~governmental~~ **eligible** entities for the planning, design, ~~and construction~~, **and refinancing** of pollution abatement projects, whether covered under ~~§211~~, §212, §319, or §320 of the ~~WQA-CWA~~ or a specific capitalization grant, including but not limited to the following: **projects listed in Env-Wq 504.02 and Env-Wq 504.04**.

{(a)-(c) have been moved and renumbered as 504.02(a) intro, (b) intro, and (c), respectively}

~~(d) Pollution abatement projects listed in an estuary conservation and management plan developed for an estuary designated as being of national significance under §320 of the CWA; and~~

~~(e) Any appurtenant facilities directly related to (a) through (d), above.~~

Env-Wq ~~505~~**504.02** ~~Allowable-**Eligible** Pollution Abatement Projects Construction Costs~~. (a) Allowable construction costs for eligible pollution abatement projects shall consist of all costs directly related to ~~t~~The construction, expansion, or upgrading of any of the following **shall be eligible for funding from the CWSRF**:

~~505.01~~(a) Wastewater facilities; **including:**

(1) Wastewater treatment plants ~~with up to a 20-year design life;~~

(2) Interceptor sewers ~~with up to 50-year design life;~~

(3) Collector sewers in accordance with §211 of the ~~WQA-CWA~~, **however provided that** loans for construction of collector sewers shall be considered only in areas of documented pollution problems, **including but not limited to surface or groundwater contamination, public health threats, or nuisance conditions, due to that are the result of** failed septic systems or direct **wastewater** discharges;

(4) Wastewater pumping stations;

~~(75)~~ I/I correction;

~~(86)~~ Sewer rehabilitation;

~~(97)~~ Treatment or abatement of combined sewer overflows; **and**

~~(108)~~ Septage disposal and treatment facilities; ~~and~~

~~505.01~~(b) Stormwater management; **projects, including:**

~~(51)~~ Storm sewers **when construction results in elimination of a combined sewer overflow structure and does not result in a new point source discharge; and**

- (62) Other stormwater management measures implemented as specified in Env-Wq 1508;
- ~~505.01~~(c) The capping and closure of unlined landfills;
- (d) ***Best management practices that address nonpoint source (NPS) pollution;***
- (e) ***Eligible §319 and §320 projects as listed in Env-Wq 504.04; and***
- ~~(14f)~~ Any appurtenant facilities directly related to ~~(4a)~~ through ~~(4e)~~, above.
- ~~(b) Other allowable costs for eligible projects shall include:~~
- {(b)(1)-(4) have been moved and renumbered as 504.03(c)-(f)}*

Env-Wq ~~505~~***504.03 Allowable Planning and Design-Eligible Costs for Pollution Abatement Projects.***
The following shall be eligible costs:

- (a) ***All costs directly related to the construction, expansion, or upgrading of an eligible project as listed in Env-Wq 504.02 or Env-Wq 504.04;***
- (b) ~~Allowable planning and design costs for an eligible pollution abatement project shall consist of~~
All costs directly related to the planning and design of the an eligible project as listed in Env-Wq 504.02 or Env-Wq 504.04, as follows including the following:
- (a1) Consulting engineering design fees, including fees for pre-closure engineering investigations for landfill capping and closure;
- (b2) Costs of hydrological investigations, subsurface investigations, and soil borings, including costs of pre-closure hydrogeological investigations;
- (e3) Environmental or archaeological consultants fees where required;
- (d4) Property boundary survey and engineering survey costs; ***and***
- (e5) Recipient administrative costs to obtain approval of the design of the pollution abatement projects that are attributable to additional administrative duties outside of normal duty hours; ~~and~~
- ~~(f) Interest accrued on disbursements.~~

~~505.03(b)-(1c)~~ Purchase of necessary land used for ***wastewater or NPS pollution control infrastructure or for*** ultimate disposal of residues resulting from wastewater treatment, such as spray irrigation or land application of sludge;

~~505.03(b)-(2d)~~ Construction engineering, including but not limited to resident engineering, operations and maintenance manual preparation, and preparation of record drawings;

~~505.03(b)-(3e)~~ Loan recipient ~~administration~~ ***administrative*** costs directly related to the pollution abatement project that are attributable to additional administrative duties outside of normal duty hours; and

~~505.03(b)-(4f)~~ Interest accrued on disbursements.

Env-Wq ~~505~~***504.04 Additional Allowable Costs Specific to §319 and §320-Eligible Projects.***
Additional allowable costs for the implementation of ~~p~~***P***ollution abatement projects under §319 or §320 of the CWA, including but not limited to ***that are eligible for CWSRF funding shall include the following:***

- (a) ***Preparation and implementation of*** estuary conservation and management plans, ~~shall consist of;~~
- (ab) Restoration projects for the following estuarine habitats or living resources:

- (1) Salt marshes;
 - (2) Eelgrass and other submerged aquatic vegetation;
 - (3) Riparian buffers;
 - (4) Diadromous fish; and
 - (5) Shellfish;
- (~~bc~~) Projects to restore hydraulic connectivity, such as culvert resizing and replacement and dam removal or repair; and
- (~~ed~~) Elimination of illicit discharges to ~~municipal~~ storm sewers, including but not limited to:
- (1) Illicit Discharge Detection and Elimination (IDDE) assessments; and
 - (2) Correction of illicit discharges.

Change the heading of Env-Wq 504 and renumber as Env-Wq 505, as follows:

PART Env-Wq ~~504~~**505 *ESTABLISHING PRIORITY FOR PROVIDING LOAN FUNDING***

Readopt with amendments Env-Wq 504.01, eff. 08-26-09 (doc. #9531), and renumber as Env-Wq 505.01, to read as follows:

Env-Wq ~~504~~**505.01 *Preliminary Project Priority List.***

(a) The ~~commissioner~~***department*** shall ~~establish and maintain a priority~~***prepare a preliminary*** list of projects ***that are*** eligible to receive financial assistance from the CWSRF ***based on the pre-applications submitted and accepted as described in Env-Wq 505.03 through Env-Wq 505.06.***

(b) If available funds are sufficient to fund all projects for which pre-applications are accepted, the preliminary list shall contain the information specified in (d), below, for all projects for which pre-applications have been accepted.

(~~bc~~) ~~The~~***If available funds are not sufficient to fund all projects for which pre-applications are accepted, the preliminary project*** priority list shall contain ~~2~~ portions, as follows:

- (1) A fundable portion, consisting of those ***eligible*** projects ~~ready for construction and anticipated to execute agreements from to which~~ available funds ***have been assigned within the coming fiscal year as evidenced by a completed financial assistance pre-application submitted to the department; and***
 - (2) A ~~planning~~***contingency*** portion, consisting of ~~a list of all government entities~~***those eligible projects*** that ~~might will~~ receive financial assistance ~~in a future year~~***if funds become available.***
- (d) The preliminary project priority list shall contain the following information for each project on the list:***
- (1) The name of the applicant;***
 - (2) The name and location of the applicant's project;***
 - (3) A brief description of the project;***
 - (4) Project priority, if applicable; and***
 - (5) The amount of financial assistance requested.***

Readopt with amendments Env-Wq 504.03, eff. 5-8-07 (doc. #8883), and renumber as Env-Wq 505.02, to read as follows:

Env-Wq ~~504.03~~505.02 Prioritization of Proposed Projects.

(a) ~~If the total of eligible costs of projects submitting available funds are not sufficient to fund all projects for which pre-applications exceeds the amount available for disbursement are accepted or if otherwise required by the capitalization grant being disbursed,~~ the department shall:

(1) Develop a priority system ~~in that~~ ***as part of the applicable*** fiscal year's Intended Use Plan (IUP) that is ~~consistent with~~ ***based on*** the ***following*** objectives:

- a. Achieving compliance ~~of with~~ the WQA-CWA and any applicable requirements in 40 CFR §§~~3100~~—3170-Part 35;***
- b. Achieving the most cost-effective reduction or elimination of pollutant discharges;***
- c. Furthering public health protection;***
- d. Maintaining affordability for users of the wastewater facilities, if applicable; and***
- e. Achieving compliance with any applicable requirements of the specific capitalization grant from which the funds are loaned;***

(2) Rank the pre-applications according to the priority system; ***and***

(3) ***Allocate the available funds starting with the highest priority and proceeding down the list until all available funds have been allocated.***

(b) If a priority system is developed, ***the department shall:***

(1) ***List the*** projects on that fiscal year's priority list ~~shall be listed~~ in order of priority; ***and***

(2) If 2 or more projects on the same list have equal ranking under the priority system, ***assign the higher ranking to*** the project with the greatest existing population served ~~shall receive the higher ranking; that would provide the greatest environmental benefit.~~

Adopt Env-Wq 505.03 to read as follows:

Env-Wq 505.03 Pre-Application Procedures.

(a) ***If requested by an entity that wants to apply for CWSRF funding, the department shall meet with the entity's representative(s) to provide information, advice, instruction, guidance, and other information to help the entity determine the scope of work needed to describe an eligible project and complete the application process.***

(b) ***Any entity that wants to borrow money from the CWSRF shall file a pre-application by completing and signing a pre-application and submitting it to:***

***NHDES Clean Water SRF Program
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095***

(c) ***Upon receipt of a pre-application, the department shall review the pre-application to determine whether the pre-application is complete, meaning all information required by Env-Wq 505.05 has been provided and the form, if submitted on paper, has been signed and dated by an authorized individual.***

(d) If the pre-application is not complete, the department shall notify the applicant in writing within 30 days of what is needed to complete the pre-application.

Readopt with amendments Env-Wq 504.02, eff. 5-8-07 (doc. #8883), and renumber as Env-Wq 505.04 and Env-Wq 505.05, to read as follows:

Env-Wq 504.02505.04 Submission of Pre-aApplications Procedures.

(a) ~~To be placed on the fundable portion of the priority list, t~~The applicant shall provide the following information ***required by Env-Wq 505.05 to the department on ***or with*** a pre-application form obtained from the department.***

(b) If the applicant uses the web-based pre-application form, submitting the form shall constitute a signature and the certification specified in (d), below.

(c) If the applicant uses a paper-based pre-application form, the individual authorized by the applicant to sign the pre-application form shall sign and date the pre-application form and print his or her name and title.

(d) The submission of the form electronically or the signature affixed pursuant to (c), above, shall constitute certification by the applicant that:

(1) The information provided is true, complete, and not misleading to the knowledge and belief of the applicant; and

(2) The applicant understands that any department determination that the applicant and the applicant's project qualifies for funding from the CWSRF that is based on false, incomplete, or misleading information is subject to modification, up to and including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200.

Env-Wq 505.05 Information Required for Pre-Applications. The information required by Env-Wq 505.04(a) shall be as follows:

(a) The applicant's name;

504.02 (db) The name, title, ***email address, and ~~signature~~***daytime telephone number*** of the individual authorized by the applicant to sign the pre-application ***who can answer questions*** on behalf of the applicant-***regarding the project;******

504.02 (ac) ~~The name~~A short title for the project, the proposed project's location, and a brief description of the project;

(d) The name of each surface water affected by the project, and for each, whether the surface water is impaired and if so, whether the proposed project addresses the impairment;

(e) Whether the project is a wastewater project, a stormwater/NPS project, or a wastewater project with stormwater/NPS components;

(f) A concise explanation of the need for the proposed project, including how it will meet the criteria listed in Env-Wq 505.02(a)(1)a. through e.;

(g) The date the applicant received governing body approval to borrow funds for the project or the date the applicant anticipates receiving such approval, as applicable;

504.02 (bh) ~~The~~An estimate of construction costs, a construction contingency, and estimated planning and engineering costs, plus the amount and a description of any other costs, where applicable, together with an estimate of the total ~~estimated~~ cost of the project;

(i) ***The amount of loan requested and loan term requested;***

~~504.02~~ (ej) The anticipated date that the:

- (1) ~~project~~***Design will be started; and***
- (2) ***Construction contract will be awarded; and***
- (3) ***Project will be completed;***

(k) ***If the cost estimates are based on a facility plan or preliminary design report signed by a professional engineer (P.E.), identification of the document and the P.E.;***

(l) ***If the cost estimates are not based on a facility plan or preliminary design report signed by a P.E., the rationale for the cost estimates;***

(m) ***Whether the project would address a federal or state administrative order or consent decree, a surface water quality impairment, a chronic NPDES compliance issue, surface water quality in unimpaired waters, an NPDES MS4 compliance issue, chronic flooding that causes a water quality problem, or a recommendation in the state Nonpoint Source Plan, a watershed-based plan that meets Clean Water Act Section 319 guidelines, or the 2010 Piscataqua Region Comprehensive Conservation and Management Plan;***

(n) ***For traditional wastewater projects:***

- (1) ***Estimates of the current and projected resident and non-resident populations served;***
- (2) ***The percentage of total estimated costs allocated to water efficiency, energy efficiency, green infrastructure, or other environmentally-innovative design;***
- (3) ***Information to demonstrate the sustainability of the proposed project;***
- (4) ***Whether an energy audit has been completed or is planned and, if so, whether the project will address any of the audit findings and a copy of the audit;***
- (5) ***A calculation of the total annual sewer user fee for a typically residence, based on water use of 185 gallons per day; and***
- (6) ***Any other information specifically required by the capitalization grant being disbursed;***

(o) ***For stormwater and NPS projects:***

- (1) ***If the project addresses an MS4 compliance issue, a description of the requirement being addressed;***
- (2) ***If the project addresses chronic flooding, a description of the water quality problem caused by the flooding; and***
- (3) ***If the project implements a recommendation in the NH Nonpoint Source Management Plan, a watershed-based plan, or the 2010 Piscataqua Region Comprehensive Conservation and Management Plan, identification of the specific plan and recommendation being implemented, including the page number;***
- (4) ***Whether the project will address:***
 - a. ***Disconnection of impervious cover from a stormwater drainage system and, if so, an estimate of the area of impervious cover to be disconnected in square feet;***

b. Protection or restoration of natural hydrology, floodplains, and wetlands and, if so, a description of how the project protects or restores natural hydrology, floodplains, or wetlands;

c. Improved stream connectivity with respect to aquatic life and, if so, a description of the barriers to be removed and an estimate of the number of miles of stream to be reconnected;

d. Smart growth as defined in RSA 9-B:3 and, if so, a description of how the proposed project addresses water quality goals through smart growth; and

(5) Any other information specifically required by the capitalization grant being disbursed; and

(p) If the applicant uses a paper-based pre-application form, the name and title of the individual authorized by the applicant to sign the pre-application form on behalf of the applicant.

Adopt Env-Wq 505.06 to read as follows:

Env-Wq 505.06 Department Action on Pre-Application.

(a) The department shall determine that the applicant's project is eligible for financial assistance from the CWSRF if:

(1) The pre-application is complete;

(2) The applicant is an eligible entity; and

(3) The proposed project is within the scope of projects identified in Env-Wq 504.

(b) The department shall notify the applicant in writing of its eligibility determination within 30 days of determining that a pre-application is complete.

(c) If the department determines that the applicant's project is eligible, the department shall place the project on the preliminary project list prepared pursuant to Env-Wq 505.01.

(d) If the department determines that the applicant's project is not eligible, the department shall state the reason(s) for the determination in the notice sent pursuant to (b), above.

(e) In response to being notified that a project is not eligible, the applicant may modify or supplement any information and submit a new pre-application to the department.

Readopt with amendments Env-Wq 504.04 and Env-Wq 504.05, eff. 5-8-07 (doc. #8883), and renumber as Env-Wq 505.07 through Env-Wq 505.09, to read as follows:

Env-Wq ~~504.04~~505.07 Intended Use Plan (IUP).

(a) For each federal fiscal year, the department shall prepare an IUP that complies with 40 CFR §35.3150 and any applicable guidance issued by the U.S. Environmental Protection Agency (EPA), specifically including the preliminary list prepared pursuant to Env-Wq 505.01.

(b) The preliminary IUP shall be subject to public comments and review as specified in Env-Wq ~~504.05~~505.06 before being finalized and submitted to EPA.

Env-Wq ~~504.05~~505.08 Annual Hearing.

(a) The ~~commissioner or designee~~ department shall hold a ***non-adjudicative public hearing annually to present the preliminary IUP, including a list of the projects expected to receive disbursement from the SRF in the coming fiscal year. Except as modified by this section, the hearing shall be conducted in accordance with the provisions of Env-C 200 that apply to non-adjudicative proceedings and oral public hearings.***

(b) The department shall publish a notice of the hearing in a newspaper of general circulation ***and on its web site*** at least 7 days prior to the date of the hearing.

(c) The department also shall ~~send~~ ***provide written*** notice of the hearing ~~by first class mail~~ at least 7 days in advance of the hearing to those ~~governmental entities~~ ***applicants*** whose projects are on the list to be presented and to any person who has submitted a written request for such notice.

(d) The department shall send the notice required by (c), above, by email to each applicant and any person who has provided an email address and by first class mail to any applicant or person who has not provided an email address.

~~(de)~~ As a supplement to the procedures specified in Env-C 205.07, any person desiring priority to speak at the hearing shall submit a copy of the testimony to be presented to the ~~commissioner~~ ***department*** no later than 2 days prior to the scheduled date of the hearing. All persons who wish to testify at the hearing who have submitted written testimony at least 2 days prior to the hearing shall be given priority to speak at the hearing. If sufficient time exists after all persons who submitted testimony have spoken, the ~~commissioner or designee~~ ***individual presiding at the hearing*** shall allow other persons to testify ~~at the hearing~~.

Env-Wq 505.09 Management of Project Priority List.

(ea) Following the hearing required by Env-Wq 505.08, the department shall:

(1) Prepare a current year ***project*** priority list ~~shall be finalized and project assistance granted accordingly, using the same process as described in Env-Wq 505.02 for the preliminary list; and~~

(2) Notify each applicant having a project on the list that a final application is required if the applicant wants to receive the funds allocated for the project.

~~(b)~~ The ~~commissioner~~ ***department*** shall substitute ***a*** projects from the ~~planning contingency portion of the project priority list~~ for ***a*** projects on the current list during the course of the fiscal year to ensure timely use of funds. ~~fundable portion of the list if an application is not received or if the project will not be ready to proceed during the funding year. If a prioritization system was developed for the fiscal year pursuant to Env-Wq 505.02, s~~Substitutions shall be in accordance with procedures established in ~~based on the priority system. Projects for which substitutions are made shall be placed on the next year's priority list for funding, whenever possible.~~

(c) The department shall review the fundable portion of the list not less than quarterly and update the list with any necessary changes, such as revised loan award dates, revised estimated construction assistance amounts, and any project substitutions.

(d) If additional funds become available during the fiscal year, the department shall extend the fundable portion of the list to include the highest ranked project in the contingency section of the list.

(e) The department shall not fund a project on the list if any of the following is true:

(1) The project is fully funded from other sources, unless the applicant is requesting refinancing of previously-incurred costs that are otherwise eligible costs;

(2) The project is found to be ineligible based on information received by the department subsequent to the placement of the project on the list; or

(3) The applicant informs the department in writing that it does not intend to pursue financial assistance from the CWSRF.

Change the heading of Env-Wq 506 as follows:

PART Env-Wq 506 PROCEDURES FOR RECEIPT OF CWSRF FUNDS

Adopt Env-Wq 506.01 to read as follows:

Env-Wq 506.01 Final Application Procedures. *An applicant whose project is on the priority list and who wishes to obtain funding shall submit the information and documents required by Env-Wq 506.03 in writing to the department within 9 months of the public hearing held pursuant to Env-Wq 505.07.*

Readopt with amendments Env-Wq 506.01, eff. 5-8-07 (doc. #8883), and renumber as Env-Wq 506.02, to read as follows:

Env-Wq 506.0402 Conditions Arising from Final Application. By ~~applying~~ ***submitting a final application*** for financial assistance, ~~each~~***the*** applicant shall be deemed to agree to the following:

(a) From the time of first application for financial assistance for a project throughout all stages of construction and implementation, and at any other time while any assistance from the CWSRF to the applicant is outstanding, the applicant shall allow the department to inspect:

(1) The project and any and all incidental works, areas, facilities, and premises otherwise pertaining to the project for which application is made; and

(2) Any and all books, accounts, records, contracts or other instruments, documents or other information possessed by the applicant or its contractors, agents, employees, or representatives which relate in any respect to the receipt, deposit, or expenditure of financial assistance funds; and

(b) After project completion, the recipient shall allow the department to conduct periodic site visits.

Readopt with amendments Env-Wq 506.02, eff. 8-26-09 (doc. #9531), and renumber as Env-Wq 506.03, to read as follows:

Env-Wq 506.0203 Final Financial Assistance Application. An applicant for financial assistance from the CWSRF shall provide the following information to the department ~~on or with forms provided by the department:~~

(a) The name, mailing address, and telephone number of the applicant;

(b) The name and title of the authorized representative of the applicant, and the individual's mailing address and daytime telephone number if different from that of the applicant, and if available, the individual's fax number and e-mail address;

(c) ~~A brief description of the project~~ ***statement that the project description provided pursuant to Env-Wq 505.05 has not changed or, if the information has changed, updated information;***

(d) The estimated total project cost including cost support data;

(e) The estimated project construction period;

(f) The amount of financial assistance requested;

(g) The term of the loan requested;

(h) Estimated cash flow requirements;

(i) The source of loan repayment funds;

(j) For planning, design and construction projects, an engineering report outlining:

- (1) Need;
 - (2) Alternatives evaluation;
 - (3) Cost-effective analysis including both capital and operations and maintenance costs; and
 - (4) Current facilities plan information;
- (k) A ~~resolution~~ certified and sealed ***copy of the resolution*** by the governmental entity and adopted by the ***applicant's*** governing body of the governmental entity ~~authorizing that authorizes the~~ filing of the application; and ~~identifying~~ ***identifies*** the individuals who have been authorized to sign the resolution and related documents on behalf of the governmental entity ~~applicant~~;
- (l) ***A Dun & Bradstreet data universal numbering system (D-U-N-S) number;***
- (m) ***For an applicant that is not a governmental entity, in the most recent completed fiscal year of the organization to which the D-U-N-S number belongs whether the organization:***
- (1) ***Received 80 percent or more of its annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; or***
 - (2) ***Received \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements;***
- ~~(n)~~ A letter signed by the authorized representative indicating that the application has been submitted to the office of energy and planning for review through the New Hampshire intergovernmental review process;
- ~~(no)~~ A letter signed by the authorized representative certifying that the applicant has the financial capability ***and, for entities other than governmental entities, adequate security*** to support on-going operation and maintenance and loan repayment, if applicable;
- ~~(np)~~ Evidence of approval from the governmental entity's ~~applicant's~~ governing body to raise, appropriate, and spend the requested funds on the proposed project;
- (q) ***A copy of the applicant's latest annual report or financial statements;***
- (r) ***The information needed for the environmental review under Env-Wq 508;***
- (s) ***For projects funded under §212 of the CWA, a statement that the applicant has a program in place for funding the maintenance and eventual replacement of the funded infrastructure, or, if there is no such program in place, a plan for developing an asset management program as part of the funded infrastructure project.***
- ~~(et)~~ ***For non-governmental eligible entities, d***Documentation ~~regarding of~~ the extent of the applicant's existing debt; and
- ~~(pu)~~ ***As applicable, d***Documentation of the population served by ~~and the associated~~ wastewater facilities ***targeted by the project*** or ***the*** stormwater volume for the project and the receiving facility.

Readopt with amendments Env-Wq 506.03, eff. 5-8-07 (doc. #8883), and renumber as Env-Wq 506.04, to read as follows:

Env-Wq 506.0304 Department Action on ***Final*** Application.

- (a) The department shall determine that the application is complete and all or a portion of the proposed project is eligible for financial assistance from the ***CWSRF*** if:

- (1) All or a portion of the proposed project ~~meets the criteria of Env-Wq 505.01 through Env-Wq 505.05, as applicable~~ ***is within the scope of eligible projects identified in Env-Wq 504; and***
 - (2) The applicant has submitted all information required by Env-Wq 506.0203.
- (b) The department shall notify the applicant in writing of its eligibility determination.
- (c) If the department determines that the applicant's project is not eligible, the notice sent pursuant to (b), above, shall specify the reason(s) for the determination ***and inform the applicant that the department will reconsider the determination if the applicant submits modified or supplemental information within 30 days of the date of the notice.***
- (d) ~~In response to being notified~~ ***If the applicant wants the department to reconsider its determination*** that a project is ineligible, the applicant ~~may~~ ***shall submit*** ~~modified or supplemental any~~ ***information within 30 days of the date of the notice*** and request the department to reconsider its decision in light of the new information.
- (e) Upon receipt of a request to reconsider in light of new information, the department shall review the information and make a decision in accordance with (a) through (c), above, ***except that no further reconsideration shall be undertaken.***

Change the heading of Env-Wq 507 to read as follows:

PART Env-Wq 507 ~~LOAN INTEREST RATES~~ ***FINANCIAL ASSISTANCE; PAYMENTS; ACCOUNTING***

Readopt with amendments Env-Wq 506.04, eff. 8-26-09 (doc. #9531), and renumber as Env-Wq 507.01, to read as follows:

Env-Wq ~~506.04~~ ***507.01*** ***Original Financial Assistance Agreement.***

- (a) Following acceptance of the application and upon availability of funds, a financial assistance agreement shall be executed between the state and the applicant ~~on forms provided by the state treasurer and obtained from the department.~~
- (b) ***The original financial assistance agreement shall contain the following provisions:***
- (1) ***The amount of funds being provided;***
 - (2) ***The interest rate for the loan and the length of the repayment term;***
 - (3) ***A description of the project;***
 - (4) ***Authorization for representatives of the department and applicable federal agencies to examine any of the loan recipient's records that pertain to transactions relating to the loan agreement, construction contracts, or consulting contracts for the purpose of inspection, audit, and copying during normal business hours;***
 - (5) ***A requirement for the recipient to develop and adhere to an asset maintenance and renewal plan for the funded improvements, if applicable; and***
 - (6) ***Any other provision(s) required by state or federal law in order for the agreement to be valid.***
- (~~bc~~) The ***original*** financial assistance agreement shall be subject to approval by the governor and executive council.

Adopt Env-Wq 507.02 to read as follows:

Env-Wq 507.02 Market Rate.

(a) *The department's purpose in establishing a market rate shall be to remain competitive in the infrastructure financing marketplace.*

(b) *The department shall establish the initial market rate on the date of the annual public hearing held pursuant to Env-Wq 505.07, at or below the interest rate established in the 11-Bond Index published the prior week by The Bond Buyer on-line at www.bondbuyer.com.*

(c) *The department shall review the 11-Bond Index not less than monthly.*

(d) *If at any time the arithmetic average of the 11-Bond Index values published in any 4 consecutive weeks falls below 90% of the market rate in effect at that time, then:*

(1) *The department shall adjust the market rate to equal the lowest rate published in that 4-week period; and*

(2) *The new rate shall become effective on Monday of the following week.*

Readopt with amendments Env-Wq 507.01 through Env-Wq 507.03, eff. 8-26-09 (doc. #9531), and renumber as Env-Wq 507.03 through Env-Wq 507.05, to read as follows:

Env-Wq 507.0403 Interest Rates Established.

(a) *The ~~interest rate charged~~ on ~~disbursed~~ loan funds ~~disbursed to a loan recipient prior to the date of substantial completion or the date of scheduled completion, whichever is earliest, shall accrue at the rate of one percent~~ ***be equal to 1.0% annually.*** per year up to the date of substantial completion or scheduled completion whichever is earliest.*

(b) ~~Subject to (c), below, the~~ *the interest rate charged on disbursed loan-funds during repayment of the loan shall be: ***the rate based on the repayment period selected by the applicant and the market rate in effect at the time the loan is made as shown in (c), below, subject to adjustment pursuant to Env-Wq 507.04, but in no case lower than 2.0%.****

(c) *The interest rate based on the repayment period selected by the applicant shall be as shown in table 507-1, below:*

Table 507-1: Interest Rate Based On Repayment Period Selected by Applicant

<i>Repayment Period Selected</i>	<i>Interest Rate</i>
(1) If the loan recipient selects a 5 -years or fewer repayment period,	25% percent of the market rate minus one percent;
(2) If the loan recipient selects a <i>Greater than 5 years to 10 -years repayment period,</i>	50% percent of the market rate minus one percent;
(3) If the loan recipient selects a <i>Greater than 10 years to 15 -years repayment period,</i>	75% percent of the market rate minus one percent;
(4) If the loan recipient selects a <i>Greater than 15 years to 20 -years repayment period,</i>	80% percent of the market rate minus one percent; and
(5) Calculated in accordance with the capitalization grant if the loan recipient selects a repayment period longer <i>More than 20 years, if available under pursuant to the terms of the specific capitalization grant from which the funds are loaned.</i>	<i>Calculated in accordance with the capitalization grant</i>

(~~ed~~) If the interest rate ~~calculated in accordance with~~ ***determined pursuant to*** (b) ***and*** (c), above, is higher than the interest rate charged by federal agencies for water or wastewater infrastructure projects, the interest rate shall be set at the lower of ***the following, but not less than 2.0%***:

- (1) The rate determined as specified in accordance with criteria established by the specific capitalization grant from which the funds are loaned; or
- (2) The interest rate charged by federal agencies for water or wastewater infrastructure projects.

Env-Wq 507.0204 ***Accrual of Interest Charges; Administrative Fee.***

(a) Interest on any loan funds disbursed to a loan recipient shall begin to accrue as of the date of each disbursement of such funds by the state.

(b) The loan recipient shall pay interest charges incurred on disbursed loan funds ***in accordance with one of the following, at the election of the applicant:***

- (1) Semi-annually, prior to the commencement of the loan repayment;
 - (2) Prior to the commencement of loan repayment;
 - (3) At the time of the first repayment; or
 - (4) By adding the charges to the outstanding principal balance.
- (c) Interest charges during loan repayment shall be: ~~(1) Fixed over the loan repayment period; and~~
~~(2) Established at the time of the execution of the supplemental agreement based on the loan repayment period selected by the loan recipient.~~ ***{covered by 507.05}***

(d) ***As required by RSA 486:14, I(b), the department shall set aside as an administrative fee a sum equal to 2% of all loan principal balances outstanding each year.***

Env-Wq 507.0305 ***Adjustments to Stipulated Interest Rate.***

(a) The department shall review the interest rate stipulated in the original loan agreement at the completion of the project prior to ~~setting~~ ***establishing*** the final repayment schedule ~~as outlined in the supplemental agreement.~~

(~~eb~~) If the ~~interest-market~~ rate stipulated in the original loan agreement ~~established pursuant to Env-Wq 507.02~~ is lower than the ***market*** rate that would be calculated as specified in Env-Wq 507.01 when the supplemental agreement is executed ***used to establish the interest rate in the original loan agreement***, the loan interest rate ***shall be adjusted downward from the initial rate stipulated as specified in table 507-1, using the market rate on the execution date of the supplemental*** ~~original loan agreement.~~

(~~bc~~) If the ~~interest-market~~ rate stipulated in the original loan agreement ~~established pursuant to Env-Wq 507.02~~ is higher than the ***market*** rate that would be calculated as specified in Env-Wq 507.01 when the supplemental agreement is executed ***used to establish the interest rate in the original loan agreement***, the loan interest rate shall be recalculated as specified in Env-Wq 507.01 ~~(e)~~ ***the rate stipulated in the original loan agreement.***

Readopt with amendments Env-Wq 506.08 through Env-Wq 506.12, eff. 8-26-09 (doc. #9531), and renumber as Env-Wq 507.06 through Env-Wq 507.10, to read as follows:

Env-Wq ~~506.08~~ ***507.06 Timely Use of Funds.***

(a) A recipient shall ~~begin expenditure of funds~~ ***submit a request for disbursement*** within 6 months of the execution of the financial assistance agreement.

- (b) If the recipient fails to comply with (a), above, the department shall request the recipient to show cause why the financial assistance agreement should not be canceled.
- (c) The department's request shall:
- (1) Be in writing;
 - (2) Specify a date by which the recipient must respond to the request, which shall be 20 working days from the date of the notice; and
 - (3) Inform the recipient that ~~if the recipient wishes to have~~ ***may request*** an adjudicative hearing prior to the financial assistance agreement being cancelled, ~~the response filed pursuant to (2), above, shall so indicate.~~
- (d) If the recipient wishes to have an adjudicative hearing, the ~~following~~ ***recipient*** shall ~~apply~~:
- (1) ~~The applicant shall~~ Respond in writing to the request sent by the department pursuant to (b), above; and
 - (2) ~~The applicant's response shall~~ ***include*** a request for a hearing ***in the response***.
- (e) If a hearing is requested and a settlement is not reached, the hearing shall be conducted in accordance with the provisions of Env-C 200 that apply to adjudicative proceedings.
- (f) If the recipient shows that the delay in expending the funds was based on an excusable delay, the department shall not cancel the financial assistance agreement.

Env-Wq ~~506.09~~ ***507.07*** Disbursements.

- (a) To obtain a disbursement for eligible work and equipment from the awarded funds, the recipient shall submit a written disbursement request to the department ***by mail, email, or fax***.
- (b) The written request shall include the following, as applicable to the request:
- (1) ~~The original and one copy of a~~ completed, signed Request for Disbursement form, ***NHDES-W-09-021, obtained from the department;***
 - (2) A list of the invoices or payment requisitions included with the request, by number and date, separated into the appropriate classifications of funds;
 - (3) Invoices for equipment and materials delivered and properly stored;
 - (4) Invoices from the consultant or engineer;
 - (5) Payment requisitions from the contractor(s); and
 - (6) Invoices for eligible costs not covered under (3) through (5), above.
- (c) The department shall approve the request if it determines that the costs covered by the request are eligible under Env-Wq ***504.03*** ~~505.02 through Env-Wq 505.04~~, as applicable, and the recipient's financial assistance agreement, ~~as applicable.~~
- (d) Upon approval of the request, the department shall authorize the disbursement to be made from the ***CWSRF***.
- (e) The recipient shall not make disbursement requests more frequently than ***once per calendar month*** ~~per loan~~.

Env-Wq ~~506.14~~**507.08** Supplemental Agreement.

(a) Upon completion of the project, the ~~original financial assistance agreement shall be amended to reflect the actual project expenditures. A supplemental agreement shall be executed between the state~~ ***department*** and the recipient ~~on forms provided by the state treasurer.~~ ***shall execute a supplemental agreement to reflect actual project expenditures and to establish:***

~~(b) The supplemental agreement shall contain the following information:~~

- (1) The loan interest rate ***and term*** selected by the loan recipient based on the established market rate at the time that the supplemental agreement is prepared; and
- (2) The loan repayment schedule based on the final project cost.

~~(eb)~~ ***The supplemental agreement shall be subject to approval by the governor and executive council if the amount of the final loan is greater than the amount originally approved by the governor and executive council.***

Env-Wq ~~506.14~~**507.09** Repayments.

(a) The loan recipient shall repay funds received and interest accrued thereon to the state as stipulated in the supplemental agreement.

(b) Repayments shall:

- (1) Not exceed the maximum repayment period allowed by the ~~WQA-CWA~~ or a capitalization grant, as appropriate; and
- (2) Begin by the earlier of one year following the date of substantial completion of the project or one year following the scheduled completion date established in the financial assistance agreement, unless modified with the consent of all parties.

(c) Should excusable delay be incurred beyond the scheduled completion date, the ~~commissioner~~ ***department*** shall offer to modify the financial assistance agreement to account for the delays.

(d) Any modification of the financial assistance agreement shall be negotiated with and approved by the recipient and the state prior to any formal modification of the financial assistance agreement.

(e) Loans may be repaid prior to the date stipulated in the financial assistance agreement with no prepayment penalty.

Env-Wq ~~506.12~~**507.10** Use of Funds; Return of Funds to the Department.

(a) ***The recipient shall use and expend*** Financial assistance provided from the ***CWSRF*** ~~shall be used and expended by the recipient solely and exclusively for the payment of authorized and allowable eligible costs and expenses of the project for which the financial assistance was approved.~~

(b) If the recipient uses any funds provided from the ***CWSRF*** for other than eligible costs on the specific project for which such funds were furnished, the recipient shall return or otherwise repay to the department all such funds.

Readopt with amendments Env-Wq 506.13, eff. 5-8-07 (doc. #8883), and renumber as Env-Wq 507.11, to read as follows:

Env-Wq ~~506.13~~**507.11** Retainage on Construction Contracts.

- (a) The recipient shall withhold 10% ~~percent~~ of all partial payments as retainage until 50% of the project is complete.
- (b) After the project is 50% complete, no additional retainage shall be withheld from any partial payments.
- (c) Upon substantial or final completion of the project, the recipient shall reduce the retainage to 2%. The final 2% retainage shall be held during the one-year warranty period and released only after the recipient has accepted the project.

Readopt with amendments Env-Wq 506.14, eff. 8-26-09 (doc. #9531), and renumber as Env-Wq 507.12, to read as follows:

Env-Wq ~~506.14~~**507.12** Loan Amortization.

- (a) Loan repayment shall be made according to a fixed amortization schedule based on:
 - (1) The final project cost;
 - (2) The repayment period selected by the loan recipient ~~of 5, 10, 15, or 20 years, or such other time period allowed under the specific capitalization grant from which the funds are loaned;~~ and
 - (3) The ~~established~~ interest rate ***established at the time in*** the supplemental agreement ~~is executed.~~
- (b) Loan amortization shall be made on a semi-annual or annual basis with either level debt service, or level payments of principal plus interest according to RSA 33:2, at the option of the loan recipient, over the ~~selected repayment period of 5, 10, 15, or 20 years, or such other time period allowed under the specific capitalization grant from which the funds are loaned~~ ***selected by the loan recipient.***

Delete the heading for Env-Wq 508

~~PART Env-Wq 508 RECIPIENT RESPONSIBILITIES~~

Readopt with amendments Env-Wq 508.01, eff. 8-26-09 (doc. #9531), and renumber as Env-Wq 507.13, to read as follows:

Env-Wq ~~508.01~~**507.13** Assurances. Prior to receipt of financial assistance, the recipient shall provide evidence of the following, as applicable:

- (a) Approved project plans and specifications;
- (b) Agreement to develop ***a*** user charge system and sewer use ordinances prior to 80% of construction completion, ~~in accordance with~~ ***as required by 40 CFR Part §35.2122;***
- (c) Compliance with best practicable waste treatment technology;
- ~~(d) That alternative technologies were considered in project design;~~
- ~~(ed) Evidence that~~ ***t*** The sewer collection system is not subject to excessive infiltration/inflow (I/I), ~~in accordance with~~ ***as required by 40 CFR Part §35.2121;***
- ~~(fe) That~~ ***i*** Innovative and alternative treatment technologies were considered during design;
- ~~(gf) That~~ ***p*** Potential recreation and open space opportunities were considered;
- ~~(hg) Compliance with~~ ***federal MBE/WDBE*** requirements, including bidding specifications, procurement efforts, and reporting accountabilities;

~~(i-h)~~ Agreement to maintain project financial accounts as separate accounts and in accordance with generally accepted accounting ~~principals~~ ***principles*** (GAAP);

~~(j-i)~~ Agreement to conduct a financial audit in accordance with GAAP in any fiscal year that ~~loan~~ ***federal funds from any source*** of \$500,000-750,000 or greater are ~~disbursed to~~ ***expended by*** the loan recipient ***or if otherwise required by the CWA***;

~~(k-j)~~ A letter signed by the authorized representative certifying that the ~~local authorities~~ ***loan recipient*** who will be implementing the project ~~have~~ ***has*** the necessary legal, financial, institutional, and managerial resources available to insure the construction, operation, and maintenance of the proposed project;

(k) For projects funded under §212 of the CWA, agreement to develop and implement an asset management program for the funded asset that includes:

(1) An inventory of critical assets that are part of the funded asset;

(2) An evaluation of the condition and performance of inventoried assets or asset groupings;

(3) A certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and

(4) A plan for maintaining, repairing, and, as necessary, replacing the funded asset and a plan for funding such activities;

(l) Agreement to provide notice of initiation of operation to the department upon beginning operation of the project; and

(m) Completion of value engineering for projects greater than \$1020 million in construction costs.

Readopt with amendments Env-Wq 509, eff. 5-8-07 (doc. #8883), and renumber as Env-Wq 508, cited and to read as follows:

PART Env-Wq ~~509~~508 ENVIRONMENTAL REVIEW

Env-Wq ~~509~~508.01 Environmental Review Required. Any construction project for which a loan from the CWSRF is ~~requested~~ ***provided*** shall be reviewed for impacts on the human and natural environment in accordance with this part.

Env-Wq ~~509~~508.02 General Procedure.

(a) The department shall ~~be the lead entity for coordinating the environmental review process and prepare an environmental review report based on~~ ***for the applicant's proposed project based on the information submitted by the applicant pursuant to Env-Wq 506.03(o).***

(b) The environmental review shall result in one of the following:

(1) A categorical exclusion (CE);

(2) A finding of no significant impact (FNSI); or

(3) A requirement for the applicant to prepare an environmental impact statement (EIS).

Env-Wq ~~509~~508.03 Categorical Exclusion (CE) Review.

(a) The department shall review the proposed project to determine whether the project qualifies for a CE.

- (b) A CE determination shall be made if the project comprises only:

(1) Work on existing facilities where no new disruption of the environment will occur, such as correction of infiltration and inflow, replacement of equipment, or addition of small new structures on site; ~~or~~

(2) Work where only a small disturbance is required, such as for upgrades, and no increase or expansion is planned; ***or***

(3) Acquisition of land or conservation easements.

- (c) If the department determines that the project qualifies for a CE, the department shall:

(1) Prepare a review document describing the basis for its determination; and

(2) ~~Forward the document to the applicant to distribute for review and comment in accordance with Env-Wq 509.05.~~ ***Publish a notice on its website that contains the following:***

a. The name, mailing address, and daytime telephone number of the individual representing the applicant who can answer questions regarding the proposed project;

b. A link to an on-line copy of the CE determination or the name and daytime telephone number of the individual to contact to obtain a copy of the determination;

c. The name, mailing address, daytime telephone number, and e-mail address of the individual at the department to whom comments should be directed; and

d. The deadline for submitting comments, which shall be no sooner than 10 days from the date on which the notice is published.

~~(d) At the close of the review and comment period, the department shall make a final determination in accordance with the following: (1) If no significant adverse comments are received, the department shall issue a CE as the final action; or (2) If significant adverse comments are received~~ ***prior to the deadline specified in the notice***, the department shall prepare an EA in accordance with Env-Wq ~~509~~**508**.04.

(e) The department shall ***notify the applicant in writing if a determination is made to prepare an EA.*** ~~send its final determination in writing to the applicant and to any other person who requested during the public comment period to receive a copy.~~

Env-Wq ~~509~~**508**.04 Environmental Assessment (EA).

(a) For projects that do not qualify for a CE, the department shall prepare an EA in accordance with this section.

- (b) The EA shall contain the following information:

(1) The purpose of and need for the proposed project;

(2) A list of all environmental concerns raised by the proposed project;

(3) A list of alternatives to the proposed project, including a no action alternative;

(4) Details of the recommended action, ~~whether the recommended action is the proposed project or an identified alternative;~~ ***which shall be the proposed project or an alternative identified in the planning document prepared pursuant to Env-Wq 506.03(j) that:***

a. Is most likely to ensure compliance with federal and state water quality requirements over the projected life of the funded infrastructure; and

b. Best meets the criteria specified in Env-Wq 505.02(a)(1); and

(5) Mitigation measures required for the recommended action, if any.

(c) The department shall forward the EA to the applicant to distribute for review and comment in accordance with Env-Wq ~~509~~**508**.05.

Env-Wq ~~509~~**508**.05 Public Notification and Review Period.

(a) Following the issuance of a ~~preliminary CE determination or draft~~ EA, as applicable, the department shall send a copy of the draft **EA** to the applicant.

(b) The applicant shall publish a notice in a ~~local and statewide~~ ***daily*** newspaper ***of general circulation in the project's community and on the applicant's web site, if any,*** that the ~~preliminary CE determination or draft~~ EA, as applicable, is open for public comment.

(c) The notice published pursuant to (b), above, shall specify:

~~(1) Whether the notice is for a preliminary CE determination or an EA;~~

~~(2)~~ ***(1)*** The name, mailing address, and daytime telephone number of the individual representing the applicant who can answer questions regarding the proposed project;

~~(3)~~ ***(2)*** The name and location of the public place where the ~~preliminary CE determination or draft~~ EA can be reviewed or the name and daytime telephone number of the individual to contact to obtain a copy of the document ***and, if available, a link to an on-line copy of the draft EA;***

~~(4)~~ ***(3)*** The name, mailing address, daytime telephone number, and e-mail address of the individual at the department to whom comments should be directed; and

~~(5)~~ ***(4)*** The deadline for submitting comments, which shall be no sooner than 30 days from the last date on which the notice is published.

(d) No formal action shall be taken during the public review period.

Env-Wq ~~509~~**508**.06 Department Decision.

~~(a) At the close of the review and comment period for a preliminary CE determination, the department shall make a final determination in accordance with Env-Wq 509.03(d).~~

~~(b)~~ ***(a)*** At the close of the review and comment period for an EA, the department shall make a determination in accordance with the following:

(1) If no significant adverse comments are received, the department shall issue a FNSI as the final action; or

(2) If significant adverse comments are received, the department shall direct the applicant to convene a public information meeting in accordance with ~~RSA 91-A and any other applicable local requirements,~~ ***including RSA 91-A for governmental entities.***

~~(b)~~ ***(b)*** Within 60 days of the public information meeting conducted pursuant to ~~(b)~~ ***(a)***(2), above, the department shall assess the comments and ~~make~~ ***issue a written decision containing*** one of the following determinations:

(1) ***The department shall issue a FNSI*** if the department finds either that:

a. The comments received do not indicate that the proposed project will actually have a significant adverse impact on the environment;~~or that~~

*b. The benefit to public health or the environment conferred by the project as proposed outweighs any significant adverse impact **on the environment** caused by the project as proposed;*~~the department shall issue a FNSI; or~~

c. Any significant adverse impact on the environment caused by the project as proposed has been or will be addressed through another permit issued by the department, the Army Corps of Engineers, or EPA;

(2) If the department finds that the project is likely to have a significant adverse impact on the environment that could be lessened or eliminated by implementing an alternative proposal, the department shall order the applicant to re-review the proposed project to identify an alternative with less environmental impact;

(3) If the department finds that the project will have a significant adverse impact on the environment that could be lessened or eliminated by modifying the project as proposed to incorporate mitigating procedures, the department shall require mitigating procedures to be implemented as a condition of receiving ~~a loan~~ **financial assistance** from the CWSRF; or

(4) If the department finds that the project will have a significant adverse impact on the environment that cannot be lessened or eliminated by implementing an alternative proposal or by incorporating mitigating procedures, the department shall:

a. Direct the applicant to initiate an EIS in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. §§4321 - 4370f., and EPA procedures; and

b. Require the applicant to use a private consultant if the department finds that the applicant does not possess the requisite technical resources to prepare the EIS without the aid of a private consultant.

Env-Wq ~~509~~**508.07** Appeal.

(a) Within 30 days of the date of the written department decision ~~to~~ **issued pursuant to Env-Wq 508.06(c)** ~~a final CE or FNSI~~, any person aggrieved by the decision may ~~file a petition for appeal with the New Hampshire Water Council. Such petition shall be filed in accordance with Env-WC 200~~ **appeal the decision as a permitting decision as specified in RSA 21-O:14.**

~~(b) If the 30th day falls on a Saturday, Sunday, or state legal holiday, the time period shall extend to 4:00 p.m. on the first state business day following the 30th day.~~

~~(eb)~~ If no petition for appeal is filed within the specified period, the decision shall be final upon the expiration of that period.

Env-Wq ~~509~~**508.08** Duration of Decision. Final decisions ***under this part*** shall be valid for 5 years. If a project is not initiated within that time period, a new environmental review shall be undertaken.

Adopt Env-Wq 509 to read as follows:

PART Env-Wq 509 PROCUREMENT OF ENGINEERING SERVICES

Env-Wq 509.01 Definition. For purposes of this part, “consulting engineer” means the listed engineer selected by a recipient in accordance with this part to provide consulting engineering services on projects funded in whole or in part by the CWSRF that require the services of a professional engineer.

Env-Wq 509.02 Listed Engineer Required for Funding. In order to receive funding from the CWSRF for engineering services for projects funded in whole or in part by the CWSRF that require the services of a professional engineer, the recipient shall contract only with a listed engineer as defined in Env-C 502.10.

Env-Wq 509.03 Solicitation of Proposals.

(a) Prior to soliciting proposals, the recipient shall submit a copy of its request for proposals (RFP) for a particular wastewater project to the department.

(b) The department shall review the RFP and provide comments thereon in accordance with Env-Wq 509.06.

(c) The recipient shall:

(1) Modify the RFP if necessary in response to the department's comments; and

(2) Send the RFP to at least 3 listed engineers, provided that if the recipient does not receive 3 proposals in response, the recipient shall send the RFP to at least 3 additional listed engineers.

Env-Wq 509.04 Selection of a Consulting Engineer. Following receipt of proposals, the recipient shall:

(a) Interview at least 3 of the responding listed engineers to discuss the details of the proposal and other information such as:

(1) Experience with similar projects that have been successfully completed;

(2) Current workload and availability of personnel to be assigned to the project;

(3) References from clients with completed projects; and

(4) Names of intended subcontractors for professional services, if any;

(b) Rate the listed engineers in order of preference based on their respective qualifications to undertake the work, and list the factors used in making the choices;

(c) Inform the department in writing of:

(1) The name of the listed engineer selected by the recipient;

(2) The names of the recipient's second and third choices;

(3) Details of the selected proposal; and

(4) Estimated dates for project commencement and completion;

(d) Inform the selected listed engineer in writing of the final terms of the proposal and that:

(1) The recipient has informed the department of the listed engineer's selection by the recipient; and

(2) The department will be reviewing the process by which the recipient selected the listed engineer to determine whether the requirements of Env-Wq 509 have been met.

(e) Send a copy of the notification required by (d), above, to the department;

(f) *Negotiate the proposed fee and contract terms with the selected listed engineer, such terms to be consistent with Env-Wq 509.05; and*

(g) *Repeat steps (a) through (f), above, if the interviews with the rated listed engineers fail to result in the selection of a consulting engineer for the project.*

Env-Wq 509.05 Consulting Contracts for Expenditures of CWSRF Funds.

(a) *For all projects funded from the CWSRF that require consulting engineering services, the contract for such services shall contain the following:*

- (1) *A description of the services to be provided by the consultant, including the due date for any report or plans that will be prepared;*
- (2) *The loan recipient's responsibilities under the contract;*
- (3) *The estimated time of completion of the services covered by the contract;*
- (4) *Compensation to be paid to the consultant; and*
- (5) *Termination provisions.*

(b) *The recipient shall comply with all applicable procedures and incidental legal requirements in awarding the consultant's contract.*

Env-Wq 509.06 Final Terms for Engineering Services Contracts; Contract Revisions.

(a) *On receipt of the draft engineering services contract from the recipient, the department shall review the draft contract to confirm that the contract conforms with Env-Wq 509.05.*

(b) *The department shall inform the selected listed engineer and the recipient in writing of any comments regarding the contract terms, proposed work, and fee, based on the department's knowledge of work and fees for comparable projects in the state.*

(c) *The recipient shall submit to the department for review any revisions to the contract made subsequent to acceptance.*

(d) *In order for costs to remain eligible for funding from the CWSRF, the contract and any subsequent revisions shall be subject to negotiated changes if the department determines that the terms would result in excessive payments to the listed engineer based on a comparison of the subject terms with the terms of contracts for comparable projects in the state.*

Env-Wq 509.07 Consulting Engineer Status During Project Construction Phase; Resident Engineer Supervision Required.

(a) *After the contract for engineering services has been signed by the recipient and the consulting engineer, the consulting engineer shall act as the agent for the recipient in all matters related to the project that also involve the department.*

(b) *Engineering services contracts for the construction phase of a project shall require a resident engineer to assure that the project meets the plans, technical specifications, and agreement for construction of the project.*

(c) *The consulting engineer shall notify the department in writing of the name of the resident engineer and all assistant engineers and construction inspectors, together with a brief history of the resident engineer's construction experience.*

(d) The consulting engineer shall notify the department of any request for a change or any actual change of resident engineer by submitting the name and qualifications of the proposed new resident engineer in writing to the department.

(e) The department shall approve the change if the proposed new resident engineer meets the criteria specified in Env-Wq 502.43.

(f) The department shall notify the consulting engineer of its decision on the proposed new resident engineer:

(1) By telephone, e-mail, or fax, as soon as practicable; and

(2) If the initial notice was by telephone, by sending written confirmation by email or fax within 30 days of receiving the written notification from the firm.

(g) If the department does not approve the proposed resident engineer, the notice provided pursuant to (f), above, shall specify the reason(s) for the decision.

Add a heading for Env-Wq 510 to read as follows:

PART Env-Wq 510 DESIGN, CONSTRUCTION, AND IMPLEMENTATION PHASES

Readopt with amendments Env-Wq 506.05, eff. 8-26-09 (doc. #9531), and renumber as Env-Wq 510.01 and Env-Wq 510.02, to read as follows:

Env-Wq ~~506.05~~510.01 Engineering Plans, and Specifications, and Engineering Contracts.

(a) Pursuant to RSA 485-A:4, IX, the applicant shall submit **engineering** plans and specifications for wastewater facilities for review and approval in accordance with Env-Wq 700.

(b) For projects to abate non-point source pollution, the applicant shall submit plans and specifications **that** meeting the requirements specified in of Env-Wq 1503.07 through Env-Wq 1503.09, as applicable, which **and** demonstrate compliance with the applicable provisions of Env-Wq 1508.

{(c) has been moved and renumbered as 510.02(b)}

~~(d) For all projects funded by the SRF program, whether for construction, planning, or design, a contract for professional services shall be in compliance with Env-Wq 600.~~ **redundant of 509.02**

(c) For dam removal and repair projects, the applicant shall submit plans and specifications that meet the applicable requirements of Env-Wr 100 through Env-Wr 600.

(d) For subdivision and individual sewage disposal system projects, the applicant shall submit engineering plans and specifications that meet the applicable requirements of Env-Wq 1000.

Env-Wq 510.02 Construction Contract Documents.

(a) The recipient shall submit construction contract documents to the department for review and approval.

~~506.05-(eb)~~ No construction project shall be offered for public bid until such approval is granted by the department **has reviewed and approved the contract documents as specified in Env-Wq 510.03.**

(d) The construction contract documents submitted by the recipient to the department shall contain the following information:

(1) Bidding requirements for the construction of the project that meet the requirements in Env-Wq 510.04, including bid advertisement or solicitation for competitive quotations,

information for bidders, a bid proposal form that separates eligible construction from ineligible construction, and applicable bid security requirements;

(2) Agreement and applicable forms for the payment bond, performance bond, notice to proceed, and related forms such as the contractor's affidavit, the contractor's release, the certificate of substantial completion, and the format for change orders;

(3) Applicable federal requirements, including forms;

(4) Plans and specifications as specified in Env-Wq 510.01;

(5) Appendices including boring logs, permits and other details as appropriate;

(6) Provisions giving authorized representatives of the department access to all construction activities, books, records, and documents for the purpose of inspection, audit, and copying during normal business hours; and

(7) Such conditions, specifications, and other provisions as are required to comply with state and federal law.

Adopt Env-Wq 510.03 and Env-Wq 510.04 to read as follows:

Env-Wq 510.03 Department Review of Contract Documents.

(a) The department shall review the contract documents submitted pursuant to Env-Wq 510.02 within 30 days of receipt.

(b) The department shall approve the contract documents if they:

(1) Meet the requirements stated in Env-Wq 510.02(d);

(2) Are consistent with all applicable state and federal requirements; and

(3) Are consistent with the engineering report submitted pursuant to Env-Wq 506.03(j).

(c) After the contract documents are approved, no changes to the contract documents shall be made unless the recipient obtains prior approval from the department pursuant to Env-Wq 510.06(d).

(d) After the contract documents are approved, no increases in project cost or scope shall be made unless the recipient obtains prior approval from the department pursuant to Env-Wq 510.06(e).

(e) Approval of the contract documents shall not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

Env-Wq 510.04 Bidding Requirements. Recipients of state or federal funds for projects covered under §211 or 212 of the CWA shall comply with the following bidding requirements:

(a) The bid period shall be not less than 30 calendar days;

(b) The advertisement for bids shall include the following information as commensurate with the nature and magnitude of the project:

(1) The project name and contract number;

(2) The location of work;

(3) A description of work to be performed;

(4) The names and addresses of persons receiving bids;

- (5) The time and date at which the bids will be publicly opened and read aloud, and a statement that bids received after that time will not be accepted;***
- (6) An address and cost information for obtaining plans and specifications; and***
- (7) The addresses where plans and specifications can be examined.***
- (c) A bid security in the amount of 5% of the bid shall be required in the form of a certified check or a bid bond executed by a surety company authorized to do business in New Hampshire and made payable to the recipient;***
- (d) A 100% performance bond and a 100% payment bond shall be required.***
- (e) The recipient shall reserve the right to:***
 - (1) Reject any or all bids;***
 - (2) Accept any bid;***
 - (3) Waive any informalities or minor defects on bids received; and***
 - (4) Omit any bid item.***

Readopt with amendments Env-Wq 506.06 and Env-Wq 506.07, eff. 5-8-07 (doc. #8883), and renumber as Env-Wq 510.05 and Env-Wq 510.06, to read as follows:

Env-Wq ~~506.06~~ 510.05 Awarding Construction Contracts.

- (a) The recipient of financial assistance from the CWSRF for a construction project shall comply with all applicable legal procedures and other legal requirements in advertising for bids and awarding the construction contract.***
- (b) The text of the construction contract documents shall not vary from the text of the contract documents approved pursuant to Env-Wq 510.03 unless a change has been approved pursuant to Env-Wq 510.06.***
- (c) After receiving and reviewing bids, the recipient shall select the lowest responsive bid or competitive quotation, unless approval is requested and obtained from the department to award the contract to a higher bid or quotation based on objective knowledge that the apparent lowest bid or quotation is not responsible.***
- (ad) The loan recipient shall submit a request for authorization ~~approval from the department~~ to award the construction contract by submitting that includes the following to the department in writing:***
 - (1) A revised, detailed total project cost estimate of eligible project costs, including construction, engineering, and other costs;***
 - (2) Evidence of advertisement for bids;***
 - (3) A tabulation of all bids that were received;***
 - (4) A letter signed by the governmental entity recipient's authorized representative that indicates indicating the contract value and the name of the bidder to whom the contract is planned to be awarded;***
 - (5) A copy of the bid proposal of the bidder to whom the contract is planned to be awarded;***
 - (6) An itemized breakdown of bid quantities and associated costs eligible for CWSRF participation;***

(7) ***For projects funded under §211 or §212 or both of the CWA, certification that the loan recipient has retained an engineer that is prequalified by the department under Env-C 500 to provide construction phase engineering services;***

(68) ***For projects funded under §211 or §212 or both of the CWA, documentation assuring bidder compliance with EPA's Minority and Women's ~~Disadvantaged~~ Business Enterprise (MBE/WBE/DBE) participation requirements, 40 CFR 31.36(e) Part 33, including bidding specifications, procurement efforts, and reporting accountabilities; and***

(79) Certification that all necessary permits, land acquisitions, and easements have been secured.

~~(be) The department shall review the summary and approve the loan recipient's acceptance of the lowest competitive bid responsive to the contract documents, plus a 5 percent contingency, and related engineering and administrative costs as indicated in Env Wq 505.02 and Env Wq 505.03~~ ***approve the award of the construction contract if it determines that all applicable requirements have been met. The applicant shall not award the construction contract until after it has received written approval to do so from the department.***

(ef) For all construction projects funded by the CWSRF program, following receipt of approval from the department, ***the recipient shall execute*** a construction contract ~~shall be executed between the loan recipient and~~ ***with the selected*** contractor.

Env-Wq 506-07***510.06*** Changes to Contracts ***Documents and Project Cost or Scope.***

(a) Any increases in project cost or scope shall not be funded unless the prior approval of the department was obtained through a written request to the department explaining the extent of the increased costs or scope and reasons for the adjustments. ***After the contract documents have been approved by the department and prior to awarding the contract, the recipient shall not make, allow, or authorize any changes, modifications, or amendments to or departure from the approved plans and specifications that would materially or significantly affect project cost, estimated revenues, or project design without the prior written approval of the department.***

(b) ***A request to modify contract documents as described in (a), above, shall:***

(1) ***Identify the specific change(s) for which approval is sought;***

(2) ***Explain the reasons for the request, including an explanation of the operational or economic consequences of the requested changes not being approved; and***

(3) ***Explain how the request meets the criteria specified in (d) or (e), below, as applicable.***

(c) ***The department shall approve or deny the request within 10 working days of receipt of a request meeting the criteria of (b), above.***

(d) ***The department shall approve one or more changes in the contract documents if the recipient's request demonstrates that the change(s) are:***

(1) ***Consistent with applicable federal and state requirements; and***

(2) ***In the best interests of the CWSRF and the public served or to be served by the project.***

~~(be) The department shall approve a request made pursuant to (a), above,~~ ***for an increase in project cost or scope if the following criteria are met:***

(1) The increased ~~cost or~~ scope was not reasonably foreseeable at the time the original project proposal was submitted;

- (2) The cost increase results in a total cost no greater than the prevailing rate for the item to which the cost is attributable such as, but not limited to, labor and materials;
- (3) ***If the recipient is requesting additional CWSRF funds,*** ~~The item to which the cost increase is attributable is an eligible cost as specified in Env-Wq 505504;~~ and
- (4) ***If the recipient is requesting additional CWSRF funds,*** ~~The fund has sufficient monies available at the time the request is filed to cover the proposed cost increase.~~

Readopt with amendment Env-Wq 508.03, eff. 8-26-09 (doc. #9531), and renumber as Env-Wq 510.07 and Env-Wq 510.08, to read as follows:

Env-Wq ~~508.03~~***510.07 Recipient's Obligations for Inspections During Construction.***

(a) During the construction phase of the project, the recipient shall obtain the engineering services necessary to assure completion of the project in accordance with the loan agreement and the approved plans and specifications.

(b) After the construction contract is awarded, the r~~Recipients shall contract for or otherwise provide for on-site inspections of the work being funded. The extent of inspection shall be agreed upon by the recipient and the department and stipulated in the contract for professional services.~~***project by a resident engineer that are sufficient to provide assurance to the recipient and the department that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and sound engineering principles and building practices.***

Env-Wq 510.08 Department Inspections During Construction.

(a) The recipient also shall make provision for periodic inspection by~~allow department personnel to inspect the project at any time in order to confirm that:~~

- (1) The materials furnished meet the approved specifications; and***
- (2) The project is being built in accordance with the approved plans and specifications and any approved alterations.***

(b) In conjunction with project inspections, the department shall:

- (1) Inspect the materials that are visible at the time of the inspection to determine compliance with the approved plans and specifications; and***
- (2) Document the manner and progress of the project, conditions relating to the materials furnished, and on the contractor's compliance with the approved plans and specifications for the project.***

(c) Inspections by the department shall not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents, nor shall such inspections release the project engineer from determining compliance with the requirements of the contract documents.

(d) The contractor and recipient shall provide the department with every reasonable accommodation for ascertaining whether the work as performed is in accordance with the requirements and intent of the contract.

(e) The department shall, as soon as practicable, bring to the attention of the recipient and the project engineer any variances from the approved plans and specifications of which it becomes aware through its inspections.

(f) Upon being notified of any such variances, the recipient and the project engineer shall immediately:

(1) Initiate necessary action to rectify the deficiencies; or

(2) Provide documentation explaining the reason(s) for the variance and demonstrating that the installation meets the applicable requirements listed in Env-Wq 510.06.

(g) If the recipient's project engineer disagrees with the department as to whether material furnished or work performed conforms with the terms of the construction contract, the recipient shall direct the project engineer to reject questionable materials and initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

Adopt Env-Wq 510.09 through Env-Wq 510.12, to read as follows:

Env-Wq 510.09 Limitations on Project Modifications; Requests for Approval.

(a) After construction has commenced, the recipient shall not make, allow, or authorize any changes, modifications, or amendments to, or any departures from, the approved plans and specifications that would materially or significantly affect project cost, estimated revenues, or project design without prior written approval from the department.

(b) The recipient shall request such approval by submitting the following information in writing to the department:

(1) The name of the recipient and the name and location of the recipient's water pollution abatement project;

(2) The date of the loan agreement;

(3) A description of the modification(s) for which the recipient is seeking approval;

(4) The reason why the modification(s) are necessary; and

(5) The operational and economic consequences to the recipient and the project of the department not approving the modifications.

Env-Wq 510.10 Approval of Project Modifications.

(a) Subject to (b) and (c), below, the department shall approve a request submitted pursuant to Env-Wq 510.09 if:

(1) The scope of the project as modified is consistent with the original intent of the financial assistance; and

(2) If additional CWSRF funds are requested, the increased cost is approvable under the criteria established in Env-Wq 505.

(b) The department shall review the request and notify the recipient and project engineer as soon as practicable considering the scope of the request.

(c) A change of project scope, such as the addition of new construction items, shall not be eligible for additional funding after loan closing unless one of the following conditions are met:

(1) The change of scope is necessary due to an oversight, and is needed to provide a functional end result and not to replace faulty construction or equipment already funded; or

(2) ***The change of scope is necessary due to changes in federal or state requirements.***

(d) ***The amount of funding provided from the CWSRF shall be increased only by a formal amendment in writing with the department, with governor and council approval.***

Env-Wq 510.11 Construction Phase Submittal. During the construction phase of the project, the recipient shall submit:

(a) ***A notice of completion of construction to the department, upon completion of project construction; and***

(b) ***Any other construction-phase submittals required by the financial assistance documents to be submitted for the department's approval.***

Env-Wq 510.12 Final Inspection and Audit.

(a) ***Upon completion of any project for which financial assistance from the CWSRF has been provided, the recipient shall furnish to the department written notification of completion.***

(b) ***Upon receipt of such notification, or upon project completion should notification not be furnished as required, and prior to the department approving the final loan disbursement, the department shall conduct:***

(1) ***A final on-site inspection of the project with the recipient or the recipient's designee; and***

(2) ***An audit of any and all financial assistance funds furnished to the recipient.***

Readopt with amendments Env-Wq 508.02, eff. 8-26-09 (doc. #9531), and renumber as Env-Wq 510.13, to read as follows:

Env-Wq ~~508.02~~510.13 Certification. One year after the initiation of operation, ~~the~~ recipient shall certify in a letter to ~~using a form obtained from~~ the department that any ~~pollution abatement~~ project constructed from ~~or otherwise implemented using~~ funds made available through the CWSRF meets applicable design specifications and, if a wastewater treatment plant, meets effluent limitations included in its permit one year after the initiation of operation.

Readopt with amendments Env-Wq 510, eff. 8-26-09 (doc. #9531), and renumber as Env-Wq 511, to read as follows:

PART Env-Wq ~~510~~511 WAIVERS

Env-Wq ~~510~~511.01 Purpose. The purpose of the rules in this chapter apply to a variety of situations. It is recognized that part is to accommodate situations in which strict compliance with all rules in this chapter may not always be in the best interests of the public or the CWSRF in every conceivable situation. The department therefore establishes these procedures and criteria, in accordance with RSA 541-A:22, IV, to accommodate those situations where strict adherence to the rules would not be in the best interest of the public or the SRF.

Env-Wq ~~510~~511.02 Procedures.

(a) Any applicant or recipient who is or would be directly and adversely affected by the strict application of a rule in Env-Wq 500 may request a waiver thereof.

(b) Each request for a waiver shall be filed in writing.

(c) Each request for a waiver shall include the information specified in Env-Wq ~~510~~511.03 ***and be signed as required by Env-Wq 511.04.***

Env-Wq ~~510.04~~**511.03** Content and Format of Requests. ~~(a)~~ The person requesting the waiver shall provide the following information:

~~(1a)~~ The name, mailing address, and daytime telephone number of the requestor;

~~(2b)~~ The project to which the waiver request relates;

{no subparagraph (3) in existing rules}

~~(4c)~~ The number(s) of the specific section(s) of the rules for which a waiver is sought;

~~(5d)~~ A full explanation of why a waiver is being requested, including an explanation of the ***economic and operational*** consequences of complying with the rule as written;

~~(6e)~~ If applicable, a full explanation of the alternate(s) proposed to be substituted for the requirement in the rule, including documentation ~~and-or~~ data, ***or both***, to support the alternative;

~~(7f)~~ Whether the need for the waiver is time-limited and, if so, the estimated length of time the waiver will be needed; and

~~(8g)~~ A full explanation of why the applicant believes that having the waiver granted will meet the criteria specified in Env-Wq ~~510.04~~**511.05**.

Env-Wq 511.04 Signature Required.

~~(ba)~~ The person requesting the waiver shall sign the request.

~~(eb)~~ The signature shall constitute certification that:

(1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and

(2) The signer understands that any ~~variance-waiver~~ granted based on false, incomplete, or misleading information shall be subject to revocation.

Env-Wq ~~510.04~~**511.05** Criteria.

(a) Subject to (b), below, the department shall grant a waiver if:

(1) Granting the waiver, ***conditional upon implementation of alternatives, if applicable***, will result in circumstances that are as protective of the public, the environment, and the integrity of the CWSRF program as complying with the requirements contained in this chapter;

(2) Granting the waiver, ***conditional upon implementation of alternatives, if applicable***, will not adversely impact the department's obligations under RSA 486, the ~~WQA-CWA~~, or any capitalization grant; and

(3) Strict adherence to the rule would not be in the best interest of the public, the environment, or the CWSRF.

(b) No waiver shall be granted if the effect of the waiver would be to waive or modify a state or federal statutory requirement, including but not limited to any requirement of RSA 486, the ~~WQA-CWA~~, or a capitalization grant, unless:

(1) ***Such*** statute or grant expressly provides that the requirement may be waived or modified;
and

(2) In the case of a federal statute or capitalization grant, EPA does not object to granting the waiver.

Env-Wq ~~510.05~~**511.06** Decisions.

(a) The department shall notify the person requesting the waiver of the decision in writing within 30 days of receiving a complete request. If the request is denied, the department shall ~~identify the specific~~ ***specify the*** reason(s) for the denial ***in the notice.***

(b) The department shall include such conditions in a waiver as are necessary to ensure that the criteria specified in Env-Wq ~~510.04~~**511.05** are met, including if applicable the implementation of alternatives.

(c) If the need for a waiver is temporary, the waiver shall specify the date on which it will expire.

APPENDIX A: STATE AND FEDERAL STATUTES, REGULATIONS IMPLEMENTED

Rule	State Statute(s) Implemented	Federal Statute(s)/Regulations Implemented
Env-Wq 501	RSA 486:14	33 U.S.C. §§1251-1387
Env-Wq 502	RSA 486:14	33 U.S.C. §§1251-1387
Env-Wq 503	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3110
Env-Wq 504	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3150
Env-Wq 505	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3115
Env-Wq 506	RSA 486:14	33 U.S.C. §§1251-1387
Env-Wq 507	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3120
Env-Wq 508	RSA 486:14	33 U.S.C. §§1251-1387
Env-Wq 509	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3140
Env-Wq 510	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3140
Env-Wq 511	RSA 541-A:22, IV	

APPENDIX B: STATUTORY DEFINITIONS

RSA 485-A:2:

VI. “Industrial waste” means any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from development of any natural resources.

VIII. “Other wastes” means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, ashes, offal, oil, tar, chemicals and other substances other than sewage or industrial wastes, and any other substance harmful to human, animal, fish or aquatic life.

IX-a. “Septage” material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, excluding sewage sludge from public treatment works and industrial waste and any other sludge.

X. “Sewage” means the water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present.

XI-a. “Sludge” means the solid or semisolid material produced by water and wastewater treatment processes, excluding domestic septage; provided, however, sludge which is disposed of at solid waste facilities permitted by the department is considered solid waste and regulated under RSA 149-M.

XIX. “Wastewater facilities” means the structures, equipment, and processes required to collect, convey, and treat domestic and industrial wastes, and dispose of the effluent and sludge.

XVI-a. “Wastewater treatment plant” means the treatment facility or group of treatment devices which treats domestic or combined domestic and industrial wastewater through alteration, alone or in combination, of the physical, chemical, or bacteriological quality of the wastewater and which dewateres and handles sludge removed from the wastewater.